



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 9227-23
Ref: Signature Date

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Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 14 November 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your 8 January 2022 and 21 January 2022 Administrative Remarks 6105 counseling entries, and your fitness report for the reporting period 1 July 2021 to 22 January 2022. The Board considered your contention that the counseling entries were signed by an officer who did not exercise special court-martial convening authority and primary command authority over the military organization per the Marine Corps Retirement and Separations Manual (MARCORSEPMAN), and because of this, the fitness report should be pulled due to referencing the counseling entries as derogatory material, which rendered the fitness report adverse. You assert that the command never filed your statements in you service record. As evidence, you provided correspondence from your former sergeant major who explained other factors as to why the counseling entries were unjust, bias, and inconsistent.

The Board noted that pursuant to paragraph 6105 of the MARCORSEPMAN and the Marine Corps Individual Records Administration Manual, you were issued counseling entries for failure to obey orders or regulations, substandard performance, and violation of Article 107 (false official statement). The Board also noted that you acknowledged the counseling entries and the entries were signed by your commanding officer. The Board further noted that you submitted a

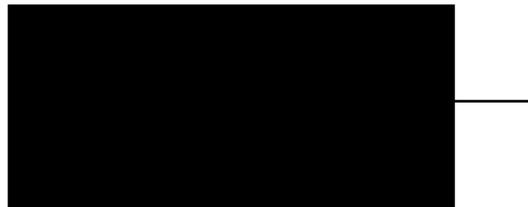
statement regarding the counseling entry dated 8 January 2022, and although you indicated your intent to submit a statement to the counseling entry dated 21 January 2022, it was not included in your application nor is it in your official record. The Board noted your contention regarding your commanding officer did not have special court-martial convening authority, however you provided no evidence to the contrary. The Board determined that the contested counseling entries were written and issued according to regulations. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and you were afforded the opportunity to submit a statement. Moreover, your commanding officer signed the entries, and he/she determined that your performance and misconduct were a matter essential to record, as it was his/her right to do. Furthermore, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Lastly, the Board reviewed your former sergeant major's request to remove your counseling entries, however determined that the correspondence was unconvincing and lacked sufficient evidence of facts that were not known or available for consideration at the time of issuance of the counseling entries.

Concerning the removal of your fitness report for the reporting period 1 July 2021 to 22 January 2022, the Board determined that you have not exhausted your administrative remedies prior to submitting your request to this Board. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore you must submit your request to the PERB according to the Marine Corps Performance Evaluation System Manual. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/1/2023

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